

only as an absolute last resort when other acceptable channels are not available, and to work to expedite timely frequency coordination procedures for these channels.¹⁰⁸

61. We recognize the unique needs and critical nature of public safety communications in the New York City metropolitan area and the funding difficulties that many of these licensees face, and have worked with NTIA to limit the possibility that it will assign the new narrowband channels that are immediately adjacent to the two Public Safety channels in the New York City area until the conclusion of our transition period to mandatory narrowband operations. We will continue to work in cooperation with NTIA, and within the Federal frequency coordination process, to be sure this remains the case.

62. As proposed in the *NPRM*, we are creating a new paragraph in Section 90.265 of our Rules to describe these public safety channels, revising the existing limitation contained in Section 90.20(d)(47) of our Rules to serve as a cross-reference, and updating footnote US11 in concurrence with NTIA to remove an outdated reference to wideband operations and to simplify the description of public safety and remote pickup broadcast operations in the band. We are stating in our Rules that these operations are on a secondary basis to any Federal station, in order to give effect to the restriction embodied in footnote US11 that non-Federal operations on 166.250 MHz and 170.150 MHz operate on the condition that no harmful interference is caused to "present or future" Federal stations. Finally, we will not require a letter of concurrence by a sponsoring Federal agency in conjunction with an application for use of these channels. We are persuaded by IMSA/IAFC's claims that such a requirement would "entail an unneeded and time consuming step" in a coordination process that it describes as "more than sufficient."¹⁰⁹

6. Public Coast Station Channels (US223)

63. Footnote US223 makes a channel available for public coast station use in limited areas near the Canadian border. Because ship and public coast operations do not fall under the same rules as PLMR operations, footnote US223 does not need to be modified to support NTIA's narrowbanding timetable, as discussed above, and therefore we proposed no changes to these frequencies as part of this proceeding.

7. Wireless Microphone Channels (US300)

64. Footnote US300 specifies eight frequencies that are available for wireless microphone operations on a secondary basis to Federal and non-Federal operations. Because wireless microphones operate at very low power (50 mW output power), there is a minimal likelihood that they will cause interference to high-power land mobile operations. Thus, we proposed no changes to the frequencies allocated for wireless microphones as part of footnote US300. No comments were received on these proposals. Accordingly, we will not narrowband these operations.

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

65. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the final rules adopted in this Report and Order. The FRFA is set forth in Appendix B.

¹⁰⁸ *Id.* at 6-8. IMSA/IAFC also notes that lack of funding sources could make it particularly difficult for local and state public safety agencies to migrate to narrowband channels quickly. *Id.* at 9-10.

¹⁰⁹ IMSA/IAFC comments at 7.

B. Paperwork Reduction Act

66. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

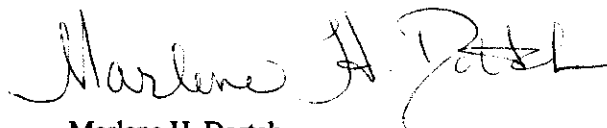
67. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

VI. ORDERING CLAUSES

68. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i), 7(a), 301, 302(a), 303(a)-(c), 303(f), 303(g), 303(r), 307, 308, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 302(a)-(c), 303(f), 303(g), 303(r), 307, 308, and 332, this REPORT AND ORDER is hereby ADOPTED.

69. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

Appendix A: Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. parts 2 and 90 as follows:

PART 2 -- FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106 is amended by revising footnotes US11, US13, US117, US216, and US312 in the list of United States footnotes and footnote G5 in the list of Federal Government footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

UNITED STATES (US) FOOTNOTES

* * * * *

US11 On the condition that harmful interference is not caused to present or future Federal stations in the band 162-174 MHz, the frequencies 166.25 MHz and 170.15 MHz may be authorized to non-Federal stations, as follows: (1) eligibles in the Public Safety Radio Pool may be authorized to operate in the fixed and land mobile services for locations within 150 miles (241.4 kilometers) of New York City; and (2) remote pickup broadcast stations may be authorized to operate in the land mobile service for locations within the continental United States, excluding Alaska, locations within 150 miles of New York City, and the Tennessee Valley Authority Area (TVA Area). The TVA Area is bounded on the west by the Mississippi River, on the north by the parallel of latitude 37° 30' N., and on the east and south by that arc of the circle with center at Springfield, Illinois, and radius equal to the airline distance between Springfield, Illinois, and Montgomery, Alabama, subtended between the foregoing west and north boundaries.

US13 The following center frequencies, each with a channel bandwidth not greater than 12.5 kHz, are available for assignment to non-Federal fixed stations for the specific purpose of transmitting hydrological and meteorological data in cooperation with Federal agencies, subject to the condition that harmful interference will not be caused to Federal stations:

Hydro Channels (MHz)			
169.425	170.2625	171.100	406.1250
169.4375	170.275	171.1125	406.1750
169.450	170.2875	171.125	412.6625
169.4625	170.300	171.825	412.6750
169.475	170.3125	171.8375	412.6875
169.4875	170.325	171.850	412.7125
169.500	171.025	171.8625	412.7250
169.5125	171.0375	171.875	412.7375
169.525	171.050	171.8875	412.7625
170.225	171.0625	171.900	412.7750
170.2375	171.075	171.9125	415.1250
170.250	171.0875	171.925	415.1750

New assignments on the frequencies 406.125 MHz and 406.175 MHz are to be primarily for paired operations with the frequencies 415.125 MHz and 415.175 MHz, respectively.

* * * * *

US117 In the band 406.1-410 MHz: stations in the fixed and mobile services shall be limited to a transmitter output power of 125 watts, and new authorizations for stations, other than mobile stations, shall be subject to prior coordination by the applicant in the following areas:

(1) Arecibo Observatory of the National Astronomy and Ionosphere Center. Within Puerto Rico and the U.S. Virgin Islands, contact:

Spectrum Manager	Phone: 787-878-2612
Arecibo Observatory	Fax: 787-878-1816
HC3 Box 53995	
Arecibo, Puerto Rico 00612	

(2) Very Large Array (VLA) of the National Radio Astronomy Observatory (NRAO). Within a 350 kilometer radius that is centered on 34° 04' 44" North Latitude, 107° 37' 04" West Longitude, contact:

Spectrum Manager	Phone: 505-835-7000
National Radio Astronomy Observatory	Fax: 505-835-7027
P.O. Box O	
1003 Lopezville Road	
Socorro, New Mexico 87801	

(3) Table Mountain Observatory of the Department of Commerce (407-409 MHz only). Within a 10 kilometer radius that is centered on 40° 07' 50" North Latitude, 105° 14' 40" West Longitude, contact:

Radio Frequency Coordinator	Phone: 303-497-6548
Department of Commerce	Fax: 303-497-3384
325 Broadway	
Boulder, Colorado 80303	

The non-Federal use of this band is limited to the radio astronomy service and as provided by footnote US13.

* * * * *

US216 The frequencies 150.775 MHz, 150.790 MHz, 152.0075 MHz, and 163.250 MHz, and the bands 462.94688-463.19688 MHz and 467.94688-468.19688 shall be authorized for the purpose of delivering or rendering medical services to individuals (medical radiocommunication systems), and shall be authorized on a primary basis for Federal and non-Federal use. The frequency 152.0075 MHz may also be used for the purpose of conducting public safety radio communications that include, but are not limited to, the delivering or rendering of medical services to individuals.

(a) The use of the frequencies 150.775 MHz and 150.790 MHz are limited to mobile stations transmitting a maximum of 100 watts Effective Radiated Power (ERP). Airborne operations are prohibited.

(b) The use of the frequencies 152.0075 MHz and 163.250 MHz are limited to base stations that are authorized only for one-way paging communications to mobile receivers. Transmissions for the purpose of activating or controlling remote objects on these frequencies shall not be authorized.

(c) Non-Federal licensees in the Public Safety Radio Pool holding a valid authorization on [insert the effective date of this Report and Order], to operate on the frequencies 150.7825 MHz and 150.7975 MHz may, upon proper renewal application, continue to be authorized for such operation; provided that harmful interference is not caused to present or future Federal stations in the band 150.05-150.8 MHz and, should harmful interference result, that the interfering non-Federal operation shall immediately terminate.

* * * * *

US312 The frequency 173.075 MHz may also be authorized on a primary basis to non-Federal stations in the Public Safety Radio Pool, limited to police licensees, for stolen vehicle recovery systems (SVRS). As of [insert the effective date of this Report and Order], new SVRS licenses shall be issued for an authorized bandwidth not to exceed 12.5 kHz. Stations that operate as part of a stolen vehicle recovery system that was authorized and in operation prior to [insert the effective date of this Report and Order] may operate with an authorized bandwidth not to exceed 20 kHz until [insert the date that is 14 years from the effective date of this Report and Order]. After that date, all SVRS shall operate with an authorized bandwidth not to exceed 12.5 kHz.

* * * * *

FEDERAL GOVERNMENT (G) FOOTNOTES

* * * * *

G5 In the bands 162.0125-173.2, 173.4-174, 406.1-410 and 410-420 MHz, use by the military services is limited by the provisions specified in the channeling plans shown in Sections 4.3.7 and 4.3.9 of the NTIA Manual.

* * * * *

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.20 is amended by revising paragraphs (c)(3), (d)(47), (d)(48), (d)(49), and (e)(6), by removing and reserving paragraphs (d)(50) and (d)(51), and by adding paragraphs (d)(87) and (d)(88) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) Frequencies.

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
*	*	*	*
Megahertz			
*	*	*	*
150.775.....	Mobile.....	87.....	PM
150.7825.....	...do.....	88.....	PM
150.790.....	...do.....	87.....	PM
150.7975.....	...do.....	88.....	PM
*	*	*	*
152.0075	Base.....	13, 30.....	PS
*	*	*	*
169-172.....	Mobile or operational fixed	48.....	
*	*	*	*
170.425.....	...do.....	9, 49.....	PO
170.475.....	...do.....	9, 49.....	PO
170.575.....	...do.....	9, 49.....	PO
171.425.....	...do.....	9, 49.....	PO
171.475.....	...do.....	9, 49.....	PO
171.575.....	...do.....	9, 49.....	PO
172.225.....	...do.....	9, 49.....	PO
172.275.....	...do.....	9, 49.....	PO
172.375.....	...do.....	9, 49.....	PO
*	*	*	*
406-416.....	Operational fixed	48	
*	*	*	*

(d) * * *

* * * * *

(47) This frequency may be assigned to stations in the Public Safety Pool in accordance with the provisions of § 90.265 of this chapter.

(48) Frequencies in this band will be assigned only for transmitting hydrological or meteorological data or for low power wireless microphones in accordance with the provisions of § 90.265 of this chapter.

(49) This frequency may be assigned only for forest firefighting and conservation activities in accordance with the provisions of § 90.265 of this chapter.

(50) [Reserved]

(51) [Reserved]

* * * * *

(87) The use the frequencies 150.775 MHz and 150.790 MHz are limited to a transmitter output power of 100 watts Effective Radiated Power (ERP) as of [insert the effective date of this Report and Order].

(88) Use of this frequency is limited to stations licensed as of [insert the effective date of this Report and Order].

(e) * * *

* * * * *

(6) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with Federal stations in the fixed and mobile services. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited to 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized bandwidth of 12.5 kHz, except that stations that operate as part of a stolen vehicle recovery system that was authorized and that was in operation prior to [insert the effective date of this Report and Order] may operate with a maximum authorized bandwidth of 20 kHz until [insert the date that is 14 years from the effective date of this Report and Order]. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively transmissions may be 200 milliseconds every second. Alternatively, transmissions from mobiles shall be limited to 1800 milliseconds every 300 seconds with a maximum of six such messages in any 30 minute period. Transmissions from base stations shall be limited to a total time of one second every minute. The FCC shall coordinate applications for base stations operating on this frequency with NTIA. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV Channel 7 transmitter of potential interference to TV Channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant:

* * * * *

5. Section 90.35 is amended by revising paragraph (b)(3) to remove the entry for "406-413" and to replace it with "406-416" to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) Frequencies.

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
*	*	*	*
Megahertz			
*	*	*	*
406-416.....	Operational fixed	53	*
*	*	*	*

* * * * *

6. Section 90.203 is amended by revising paragraphs (j), (j)(3), (j)(4), (j)(5), and (j)(7) to read as follows:

§ 90.203 Certification required.

* * * * *

(j) Except where otherwise specially provided for, transmitters operating on frequencies in the 150-174 MHz and 406-512 MHz bands must comply with the following:

* * * * *

(3) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8-162.0125 MHz, 173.2-173.4 MHz, and/or 421-512 MHz bands, received on or after February 14, 1997, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(4) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8-162.0125 MHz, 173.2-173.4 MHz, and/or 421-512 MHz bands, received on or after January 1, 2005, except for hand-held transmitters with an output power of two watts or less, will only be granted for equipment with the following channel bandwidths:

* * * * *

(5) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8-162.0125 MHz, 173.2-173.4 MHz, and/or 421-512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

* * * * *

(7) All transmitters that are designed for one-way paging operations, except those operating on the frequency 163.250 MHz, will be certified with a 25 kHz channel bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

* * * * *

7. Section 90.209 is amended by revising paragraph (b)(5) to remove the entry for "421-512" and to replace it with "406-512" to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING BANDWIDTH

Frequency band (MHz)	Channel Spacing (kHz)	Authorized bandwidth (kHz)
*	*	*
406-512 ²	¹ 6.25	^{1 3} 20/11.25/6
*	*	*

8. Section 90.217 is amended by adding paragraph (e) to read as follows:

§ 90.217 Exemption from technical standards.

* * * * *

(e) Transmitters used for wireless microphone operations and operating on frequencies allocated for Federal use must comply with the requirements of § 90.265(b).

9. Section 90.265 is amended by revising the section heading and paragraph (a) and by adding paragraphs (a)(5)-(a)(9), (c), (d), and (e) to read as follows:

§ 90.265 Assignment and use of frequencies in the bands allocated for Federal use.

(a) The following center frequencies are available for assignment to fixed stations in the Public Safety Pool or the Industrial/Business Pool, subject to the provisions of this section:

Hydro Channels (MHz)			
169.4250	170.2625	171.1000	406.1250
169.4375	170.2750	171.1125	406.1750
169.4500	170.2875	171.1250	412.6625
169.4625	170.3000	171.8250	412.6750
169.4750	170.3125	171.8375	412.6875
169.4875	170.3250	171.8500	412.7125
169.5000	171.0250	171.8625	412.7250
169.5125	171.0375	171.8750	412.7375
169.5250	171.0500	171.8875	412.7625
170.2250	171.0625	171.9000	412.7750
170.2375	171.0750	171.9125	415.1250
170.2500	171.0875	171.9250	415.1750

* * * * *

(5) After [insert the effective date of this Report and Order] for the 169-172 MHz band and January 1, 2008 for the 406-416 MHz band, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. After those dates, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz until January 1, 2013. Such operations are limited by § 90.265(a)(6) and (a)(7), below.

(6) After [insert the effective date of this Report and Order], if a licensee of a channel in the band 169-172 MHz which uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint to the satisfaction of an impacted Federal agency or is advised to do so by the Hydro Committee as approved by the FCC, then the licensee must cease operation on the frequency upon notification by the Commission.

(7) After January 1, 2008, if a licensee of a channel in the band 406.1-420 MHz which uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint to the satisfaction of an impacted Federal agency or is advised to do so by the Hydro Committee as approved by the FCC, then the licensee must cease operation on the frequency upon notification by the Commission.

(8) After [insert the effective date of this Report and Order], new assignments on the frequencies 406.125 MHz and 406.175 MHz are to be primarily for paired operations with the frequencies 415.125 MHz and 415.175 MHz, respectively and limited to an authorized bandwidth not to exceed 11.25 kHz when paired.

(9) Existing stations may continue to use the center frequencies 169.575 MHz, 409.675 MHz, 409.725 MHz, and 412.625 MHz until January 1, 2013, subject to the requirements of § 90.265(a)(6) and (a)(7), above.

(b) * * *

(c) The following center frequencies are available for assignment to licensees engaged in forest firefighting and conservation activities, subject to the provisions of this section:

Forest Firefighting and Conservation Channels (MHz)		
170.425	171.425	172.225
170.475	171.475	172.275
170.575	171.575	172.375

- (1) These frequencies will be assigned on a secondary basis to any U.S. Government station.
- (2) The frequencies 170.425 MHz, 170.475 MHz, 170.575 MHz, 171.425 MHz, 171.575 MHz, 172.225 MHz, and 172.275 MHz will be assigned only to licensees directly responsible for the prevention, detection, and suppression of forest fires.
- (3) The frequencies 171.475 MHz and 172.275 MHz will be assigned to licensees directly responsible for the prevention, detection, and suppression of forest fires; or to licensees engaged in forest conservation activities for mobile relay operation only.
- (4) The frequencies 170.425 MHz, 170.575 MHz, 171.475 MHz, 172.225 MHz, and 172.375 MHz will be assigned for use only in areas west of the Mississippi River.
- (5) The frequencies 170.475 MHz, 171.425 MHz, 171.575 MHz, and 172.275 MHz will be assigned for use only in areas east of the Mississippi River.
- (6) All applications for use of these frequencies must be accompanied by a letter of concurrence by the United States Department of Agriculture.
- (7) After **[insert the effective date of this Report and Order]**, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. Between **[insert the effective date of this Report and Order]**, and January 1, 2013, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz, subject to the limitations set forth in § 90.265(c)(8), below.
- (8) After **[insert the effective date of this Report and Order]**, if a licensee that uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint from an impacted Federal agency, then the licensee must cease operation on the frequency upon notification by the Commission.

(d) The frequencies 166.250 MHz and 170.150 MHz are available for assignment to licensees engaged in public safety activities, subject to the provisions of this section:

- (1) These frequencies are available for assignment to stations in the Public Safety Pool, only at points within 241.4 km. (150 mi.) of New York, N.Y.;
- (2) Operations on these channels is on a secondary basis to any Federal station; and
- (3) After **[insert the effective date of this Report and Order]**, if a licensee that uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint from an impacted Federal agency, then the licensee must cease operation on the frequency upon notification by the Commission.
- (4) After **[insert the effective date of this Report and Order]**, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. Between **[insert the effective date of this Report and Order]**, and January 1, 2013, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz, subject to the limitations set forth in § 90.265(d)(3), above.
- (e) The following frequencies are available for use by Medical Radiocommunication Systems:

(1) The frequencies 150.775 MHz, 150.790 MHz, and 163.250 MHz, subject to following provisions:

(i) After **[insert the effective date of this Report and Order]**, new assignments for these frequencies shall be authorized only for the purpose of delivering or rendering medical services to individuals (medical radiocommunication systems).

(ii) After **[insert the effective date of this Report and Order]**, new operations on the frequency 163.250 MHz are limited to an authorized bandwidth not to exceed 11.25 kHz.

(iii) After January 1, 2008, new operations on the frequencies 150.775 MHz and 150.790 MHz are limited to an authorized bandwidth not to exceed 11.25 kHz.

(iv) Existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate on a primary basis with a bandwidth greater than 11.25 kHz until January 1, 2013. After January 1, 2013, stations that use the frequencies 150.775 MHz, 150.790 MHz, or 163.250 MHz shall be limited to an authorized bandwidth not to exceed 11.25 kHz.

(2) The frequency 152.0075 MHz and frequencies within the bands 462.9375-463.1875 MHz and 467.9375 MHz-468.1875 MHz, subject to the limitations specified in Section 90.20 of this chapter.

Appendix B: Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹¹⁰ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rule Making* ("NPRM")¹¹¹ in ET Docket No. 04-243. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No written public comments were received concerning the initial regulatory flexibility analysis. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.¹¹²

A. Need for, and Objectives of, the Report and Order.

In the 150.05-150.8 MHz, 162-174 MHz, and 406.1-420 MHz bands, the National Telecommunications and Information Administration (NTIA) is transitioning Federal operations in the fixed and land mobile services from wideband (25 kHz) to narrowband (12.5 kHz) channels at a more rapid schedule than the Commission has adopted for Private Land Mobile Radio (PLMR) operations in these bands. Because there could be extended periods during which existing PLMR wideband operations may not be compatible with narrowband Federal operations, the Commission has revised its current narrowbanding plan for these bands to take into account that many PLMR operations in the above Federal bands are authorized on the condition that they not cause interference to Federal operations.

The Commission's objectives are to provide for a more orderly transition from wideband to narrowband operations, increase spectrum efficiency, maintain compatibility with Federal operations, permit licensees to operate using existing equipment for the maximum amount of time possible, and significantly reduce the probability that wideband operations will interfere with new Federal operations.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

There were no comments filed that specifically addressed the rules and policies addressed in the IRFA.

C. Description and Estimate of the number of Small Entities to Which the Final Rule Will Apply.

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹¹³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.¹¹⁴ Under the Small Business Act, a "small

¹¹⁰See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹¹¹19 FCC Rcd 12690, 2004, ET Docket No. 04-243.

¹¹²5 U.S.C. § 604.

¹¹³*Id.* at § 604(a)(3).

¹¹⁴5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹¹⁵

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹¹⁶ Nationwide, there are approximately 1.6 million small organizations.¹¹⁷ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."¹¹⁸ As of 1997, there were approximately 87,453 governmental entities in the United States.¹¹⁹ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 and 1,498 have populations of 500,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹²⁰ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.¹²¹

The final rules adopted in this R&O affect the following PLMR licensees: (1) Industrial/Business Pool and state and local government licensees that are authorized to make hydrological and meteorological (Hydro) measurements under footnote US13; (2) forest firefighting agencies, which are primarily state government licensees, and forest conservation agencies that are authorized under footnote US8; (3) Public Safety Pool licensees that are authorized under footnote US11; and (4) hospital, medical centers, nursing homes, *etc.* that operate medical radiocommunication systems, which are authorized under footnote US216. These United States footnotes are fully discussed in the R&O.

¹¹⁵*Id.* at § 632.

¹¹⁶5 U.S.C. § 601(4).

¹¹⁷Independent Sector, *The New Nonprofit Almanac and Desk Reference* (2002).

¹¹⁸5 U.S.C. § 601(5).

¹¹⁹U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

¹²⁰*See* 13 CFR § 121.201, NAICS code 517212.

¹²¹*See generally* 13 CFR. § 121.201.

Hydro Channel Users. The Commission has authorized 9 licensees to operate 219 fixed stations on the six channels that would be removed from the Hydro channel plan: (1) one licensee (the State of California) is authorized to operate 15 fixed stations on the frequency 169.575 MHz; (2) five licensees are authorized to operate 83 fixed stations at 409.675 MHz; (3) three licensees are authorized to operate ten fixed stations at 409.725 MHz; (4) four licensees are authorized to operate 97 fixed stations at 412.625 MHz; and (5) there are no licensees authorized to operate on the frequencies 170.375 MHz and 171.975 MHz. The Commission has issued 1053 licenses (there is at least one station per license) for the remaining Hydro channels that are being narrowbanded. We believe that some of the Hydro channel licensees are small businesses or small governmental entities.

Forest Firefighting and Conservation Agencies. The Commission has authorized 21 licensees to operate 414 fixed stations and 45,630 mobile stations on the nine channels that are available to forest firefighting agencies; two of these frequencies are also available for use by conservation agencies. By Commission Rule, these frequencies are reserved primarily for assignment to state licensees. Assignments to other licensees may be made only where the frequencies are required for coordinated operation with the state system to which the frequency is assigned. The 21 licensees consist of 19 states and state agencies, the County of Los Angeles, and a non-profit organization. This small organization may be impacted by our actions.

Public Safety Licensees. The Commission has granted 27 licensees authorization to operate wideband equipment on the frequencies 166.25 MHz and 170.15 MHz. By Commission Rule, these frequencies are to be assigned to stations in the Public Safety Pool that are at points within 240 kilometers of New York City. Specifically, the Commission has granted 15 licensees authorization to operate 1295 mobile stations, 95 pagers, and 30 fixed stations using the frequency 166.25 MHz. The Commission has granted 12 licensees authorization to operate 899 mobile stations, 165 pagers, and 22 fixed stations on the frequency 170.15 MHz. We believe that many of these public safety licensees are small governmental entities.

Medical Radiocommunication Systems. The Commission has issued 510 licenses for the frequency 150.775 MHz and 424 licenses for the frequency 150.790 MHz. By Commission Rule, these 150 MHz channels are used only by mobile stations. For example, these frequencies may be used for voice transmissions from a portable (hand-held) unit to an ambulance. The Commission has issued 524 licenses for the frequency 163.250 MHz. By Commission Rule, the frequency 163.250 MHz can be assigned only for one-way paging. We believe that most of the hospitals, medical centers, and nursing homes that operate medical radiocommunication systems are small businesses or small governmental entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

The final rules require that:

- PLMR licensees employing wideband channels for Hydro, Forest Firefighting and Conservation, and public safety operations modify or discontinue operations if, after [insert the effective date of this Report and Order], these wideband operations cause interference to new Federal operations in the 162-174 MHz band, or if, after January 1, 2008, these wideband operations cause interference to new Federal operations in the 150.05-150.8 MHz and 406.1-420 MHz bands;
- Hydro channel licensees operating on the center frequencies 169.575 MHz, 409.675 MHz, 409.725 MHz, and 412.625 MHz cease operations not later than January 1, 2013;
- PLMR applicants requesting authority to operate Hydro, Forest Firefighting and Conservation, public safety, and medical radiocommunication stations in the 162-174 MHz use narrowband channels

after January 1, 2005; and that these applicants use narrowband channels after January 1, 2008 in the 150.05-150.8 MHz and 406-416 MHz bands; and

- New Hydro stations that would operate on the center frequencies 406.125 MHz and 406.175 MHz be limited to a transmitter output power of 125 watts and required to coordinate with the Radio Astronomy Observatory at Socorro, New Mexico.

If a licensee is required to modify its operations, we believe that the licensee would either buy new narrowband equipment or that the licensee would hire a vendor to modify some or all of its wideband equipment. We are uncertain of the exact costs relating to the narrowbanding requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹²²

So long as incompatibilities are not created with Federal narrowband operations, we are permitting incumbent licensees to use existing equipment until January 1, 2013. We are requiring that the 9 licensees of the six Hydro channels being deleted from the Hydro channel plan modify their equipment and station licenses and migrate to a center frequency listed in the new Hydro channel plan on a timetable as advised by the Hydro Committee and approved by NTIA and the Commission.

We are grandfathering those incumbent stations that operate on the frequencies 150.7825 MHz and 150.7975 MHz indefinitely. We are exempting equipment designed for use in the Federal bands from our current 6.25 kHz equipment certification requirement.

Report to Congress: The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.¹²³ In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹²⁴

¹²² 5 U.S.C. § 603(c).

¹²³ See 5 U.S.C. § 801(a)(1)(A).

¹²⁴ See 5 U.S.C. § 604(b).

Appendix C: List of Commenting Parties**Comments (due September 2, 2004):**

1. ADCOMM Engineering (ADCOMM)
2. International Municipal Signal Association (IMSA) and the International Association of Fire Chiefs, Inc. (IAFC)
3. LoJack Corporation (LoJack)
4. Thurston County, Washington Department of Communications (CAPCOM)
5. Valley Communications Center (VALLEY COM)
6. Yamhill Communications Agency

Reply Comments (due September 17, 2004):

None were received.

